

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹
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PROMESA

Title III

No. 17 BK 3283-LTS

Re: ECF No. 1020, 1023

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO

Debtor.
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PROMESA

Title III

No. 17 BK 3283-LTS

**This Joint Motion relates only to
the Commonwealth and shall
only be filed in the lead Case No.
17 BK 3283-LTS.**

JOINT MOTION IN COMPLIANCE WITH ORDER AT ECF. NO. 1023

To the Honorable United States District Court Judge Laura Taylor Swain:

Come now, Glenda Colon-Figueroa (“Movant”) and the Commonwealth of Puerto Rico (the “Commonwealth”),² jointly through their undersigned counsel, to respectfully move the

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² The Financial Oversight and Management Board for Puerto Rico, as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), has authorized the Department of Justice to file this joint motion on behalf of the Commonwealth.

Court for an Order granting partial relief from the automatic stay, and, in support of their motion, state as follows:

1. On June 6, 2017, the Commonwealth requested to stay the civil action captioned Glenda Colon-Figueroa vs. Evertec Group Inc., Case No. KAC2015-0756 (505) (the “State Court Collection Action”) pending before the Court of First Instance of Puerto Rico (the “State Court”) due to the commencement of its Title III case. On August 14, 2017, the Movant appeared before this Honorable Court (the “Motion”) requesting relief from the automatic stay under Bankruptcy Code section 362 (the “Title III Stay”), made applicable to the Commonwealth’s Title III case by PROMESA section 301(a), to allow the State Court Collection Action to continue [ECF No. 1020]. The Commonwealth is due to respond to the Motion by August 28, 2017, as ordered by the Court [ECF No. 1023].

2. The defendants in the State Court Collection Action are Evertec, Inc. and Evertec Group, LLC (collectively, the “Defendants”). The State Court Collection Action is an action that seeks the return of a \$0.40 charge that is levied against custodial parents by the Defendants each time a custodial parent uses a UNICA card to access their child support alimony at an ATM machine. The Commonwealth and Government Development Bank of Puerto Rico (the “GDB”) were determined to be indispensable parties to the State Court Collection Action by the State Court; however, Movant is not seeking any payments from the Commonwealth or GDB because the charges that Movant alleged are illegal were collected by Evertec not by the Commonwealth or GDB.

3. The parties inform the Honorable Court that after evaluating the Motion and the facts of Movant’s claims in connection with the State Court Collection Action, it is in the best interest of both parties to jointly request a partial modification of the Title III Stay in the

Commonwealth's Title III case to allow the continuation of the State Court Collection Action solely against the Defendants in order for Movant to litigate the claims for alleged unlawful charges against child support alimonies. The partial modification of the Title III Stay shall not include the prosecution of any claims against the Commonwealth and the GDB, but they will remain on the State Court case as indispensable parties, unless another determination is made by the State Court.

4. It is expressly understood by Movant that Movant may proceed with the State Court Collection Action only as set forth herein, and that in no event will the Commonwealth or GDB be required to satisfy any liability to Movant in any way whatsoever with respect to the State Court Collection Action. Movant expressly agrees to discontinue with prejudice any cause of action against the Commonwealth and GDB that would cause the Commonwealth or GDB to disburse any funds in connection with the State Court Collection Action.

5. Notwithstanding anything herein, the appearance made here by the Commonwealth should not be construed as a waiver or modification of the Title III Stay so as to permit the prosecution against the Commonwealth of any claim, and the Commonwealth reserves all rights, defenses, and protections with respect to any other motions for relief of stay or any other matters pending in the Commonwealth's Title III case. The Commonwealth further reserves its rights and defenses as provided by law with respect to any claim currently pending in the State Court Collection Action or hereinafter asserted by Movant.

6. The parties agree that the stay of the State Court Collection Action is modified for the limited purpose of allowing Movant to proceed with the action against the Defendants only. The stay continues to apply to the Commonwealth in all other respects.

WHEREFORE, it is respectfully requested that the Honorable Court take notice of the above, and GRANT the partial relief requested in the *Motion for Relief From Automatic Stay* [ECF No. 1020], provided that the Title III Stay is modified for the limited purpose to allow the continuation of the State Court Collection Action solely against the Defendants. The Title III Stay shall continue to apply with respect to any claims against the Commonwealth. It is expressly understood by Movant that it may proceed with the State Court Collection Action only as set forth herein, and that in no event will the Commonwealth or any of the other Debtors in the above-captioned cases or their assets or properties to satisfy any liability to Movant in any way whatsoever with respect to the State Court Collection Action. Nothing contained herein operates as a waiver or modification of the Title III Stay for any purpose other than as expressly provided for in this paragraph.

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Motion with the Clerk of the Court, using the CM/ECF System, which will send notification of such filing to all appearing parties and counsels using the Court's electronic system.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on August 28, 2017.

<u>Attorney for Movant:</u> <u>/s/ Juan R. Dávila Díaz</u> Juan R. Dávila Díaz USDC-PR 224209 <i>Attorney for Movant</i> 134 Mayagüez Hato Rey, PR 00917 Tel. (787)525-7417 Fax. (787)763-9595 E-Mail: davilajuanr@yahoo.com	<u>Attorneys for the Commonwealth of Puerto Rico:</u> Wanda Vázquez Garced Secretary of Justice <u>/s/ Wandymar Burgos Vargas</u> WANDYMAR BURGOS VARGAS USDC 223502 Deputy Secretary in Litigation Department of Justice P.O. Box 9020192 San Juan, Puerto Rico 00902-0192 Phone: 787-721-2940 Ext. 2500, 2501 wburgos@justicia.pr.gov
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